1319. December Term, 1877.

COMMON PLEAS,

No. 1.

MANNERS

vs.

HENRY J. WILLIAMS et al.

SEPARATE DEMURRER

OF

HENRY J. WILLIAMS.

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JOHN G. JOHNSON,
GEORGE JUNKIN,
for Defendants.

Collins, Printer, 705 Jayne Street.

MANNERS *v.* HENRY J. WILLIAMS *et al.*	}	C. P. No. 1. Dec. Term, 1877. No. 1319.

THE SEPARATE DEMURRER OF HENRY J. WILLIAMS TO THE ABOVE BILL OF COMPLAINT.

The said defendant, by protestation, etc., demurs to the whole of the above bill, and to all the prayers against him for relief, and assigns for cause thereof the reasons following:—

I. The bill is defective by reason of the non-joinder, as parties complainant or defendant, of the other heirs-at-law of the testator.

II. No right in the complainant to any equitable relief is disclosed, because—

1st. The lot of ground at the corner of Broad and Christian Streets, which was purchased by the testator, was devised by a will executed more than one calendar month before his decease, to persons other than the complainant.

2d. The said will vests in the executor thereof, the discretion, as to the portion of the estate to be expended in the purchase of a library site and in the erection thereon of a library building, and disposes of the residue thereof to the exclusion of the complainant.

3d. No portion of the scheme of said will has failed, or is impractical, immoral, irreligious, or opposed to the policy of the law; were it otherwise, the complainant could derive no benefit therefrom, inasmuch as the whole estate is legally disposed of, to his exclusion, to uses which have not failed, and cannot fail, and which are legally practicable, moral, religious, and politic.

4th. It does not sufficiently appear, when or how, "The Library Company of Philadelphia" have debarred themselves from accepting the trusts in said will declared in their favor.

5th. If the said Company have thus debarred themselves, it does not sufficiently appear, how or when, the persons still in existence, authorized in such case to found and endow a public library with the testator's residuary estate, have debarred themselves from executing the trust in them reposed.

6th. Assuming, for the benefit of complainant, that the Library Company have debarred themselves from accepting the trusts in their favor, and consigning to their graves, persons still alive, authorized to found and endow a public library with said residuary estate, still, no reason is shown, for depriving the charitable uses, by this will declared, of the saving protection of the Act of Assembly of 26 April, 1855, P. L. 331.

III. The complainant is debarred, by reason of his unexplained *laches*, from claiming equitable relief.

JOHN G. JOHNSON,
GEORGE JUNKIN,
For Defendant, Williams.

Henry J. Williams, being duly sworn, says that the above demurrer is not interposed for the purposes of delay.

H. J. WILLIAMS.

Sworn to and subscribed before me this day of March, A. D. 1878.

GEORGE HOUSE,
Notary Public.

We do certify that in our opinion the above demurrer is well founded in law.

JOHN G. JOHNSON,
GEORGE JUNKIN.

In the Court of Common Pleas, No. 1, for the County of Philadelphia.

IN EQUITY.

Manners		
vs.		December Term, 1877.
Henry J. Williams and The Library Company of Philadelphia.		No. 1319.

THE SEPARATE DEMURRER OF THE DEFENDANT, THE LIBRARY COMPANY OF PHILADELPHIA, TO THE BILL OF COMPLAINT OF ROBERT MANNERS, THE ABOVE COMPLAINANT.

The said defendant, by protestation, &c., demurs to the whole of the complainant's bill, so far as relief against it is concerned, and for causes of demurrer shows as follows:—

1. It appears by the complainant's own showing in his said bill that he, the said complainant, is not the sole heir at law of James Rush, the testator in the said bill named, but that there are other heirs at law of the said testator whom the complainant has not made parties to the said bill, nor has he stated any sufficient excuse for their non-joinder.

2. By virtue of the act of the General Assembly of this Commonwealth, approved the twenty-sixth day of April, A. D. 1855, the complainant, as an heir at law, has no interest in the estate of the said testator upon the grounds stated in the bill.

3. If the provisions of the testator's will were invalid, as charged by the complainant, any proceedings by reason thereof must be instituted by leave of the Attorney-General of this Commonwealth according to the said statute in such case provided.

4. Upon the complainant's own showing, the allegation of the want of funds wherewith to maintain the Library in the said will mentioned is untrue in this, that by the very codicil relied on in the bill, the testator expressly dedicates for such purpose a fund of sufficient amount to secure certain annuities, whose aggregate is ten thousand six hundred and forty dollars per annum.

5. The clauses of the said will alleged to be contrary to morality are merely directory, and do not compel the purchase or preservation of any book whatever; nor can it be assumed that it was the intention of the testator to preserve illegal publications, and the purchasing of none other can be held to be a violation of law.

6. If, as alleged in the bill, certain parts of the said testator's scheme for a Library are impracticable or illegal, this will not defeat the scheme as a whole, but the same will be carried into effect in manner as nearly in conformity with the intent of the testator as practicable, according to the provisions of the said statute in such case provided.

7. If, as alleged in the bill, the testator purchased the said lot of ground, situate at the corner of Broad and Christian streets, within one calendar month prior to his death,

yet this purchase was not such a conveyance in trust for charitable uses as is void by reason of the provisions of the said statute in that behalf provided.

8. If the objects for which said purchase was made were or are void, the property would, under the said statute, become part of the testator's residuary estate, to the exclusion of the complainant.

9. The additional directions contained in the last codicil as to the management of the Library after acceptance, did not, as alleged in the bill, revoke the prior provisions of the will as to the disposition thereof in case of non-acceptance.

10. The testator having, by his will, devised his whole estate in trust for the uses of a Library, any subsequent direction to expend any part thereof in the purchase and improvement of a lot for the same, did not operate as a revocation of the previous gift; nor could the failure or omission by the executor to expend the whole remainder of the estate in such purchase and improvement, being a matter over which the beneficiary had no control, divest the estate, or any part thereof, so as aforesaid devised.

11. If no disposition were made of the residuary estate not thus expended nor required for paying annuities, yet any such surplus is not vested in the complainant, but remains as a gift to charitable uses to be applied under the said statute in that behalf provided.

12. It is not alleged in the said bill that the time has yet arrived for this defendant to elect to accept or refuse the trusts in the said bill contained, and the averments therein as to the refusal, incapacity or failure of this defendant so to accept, are too uncertain and inconsistent to require answer thereto.

13. It appears by the complainant's own showing that the person is still living whose discretion is alleged to be necessary to execute the trusts in the said bill contained.

14. The trusts defined by the will are sufficiently certain to be carried into effect after the selection of the lot referred to, without requiring the personal direction of the executor, defendant herein, and moreover, in case of the death of the latter, certain other persons are, by the said will, nominated and appointed by the said testator to be executors in his place and stead.

15. The complainant is debarred by his *laches* from controverting the provisions of the said will; and, by reason of lapse of time, no alleged invalidity of the codicils, or any part thereof, can now avoid the will.

16. The complainant, while seeking equity, has not offered to do equity, in this, namely, he has not offered to repay to the executor any moneys, part of the testator's estate bequeathed for the use of this defendant, which the executor may have expended upon the lot of ground now claimed by the complainant.

Wm. Henry Rawle,
R. C. McMurtrie,
For Defendant.

Lloyd P. Smith, treasurer of the Library Company of Philadelphia, being duly affirmed, says that the above demurrer is not interposed for the purpose of delay.

Lloyd P. Smith.

Affirmed and subscribed before me, this fourth day of March, A. D. 1878.

[seal] Wm. S. Bailey,
Notary Public.